IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION (L) NO.297 OF 2006

Mahanagar Gas Ltd. ..Petitioner.

Vs.

Haldyn Glass Ltd. ..Respondent.

Mr.Chirag Balsara i/b. M/s.Vyas & Bhalwal for the Petitioner.

Mr.D.D.Madon with Mr.M.G.Kothari and Ms.Taseem Loharchalwala i/b.M/s.Madekar & Co. for the Respondent.

CORAM : S.J. VAZIFDAR, J.
DATED : 19TH JUNE, 2006

P.C. :

By consent, the petition is admitted and heard finally.

2. The statements made by Mr.Madon, the learned Senior Counsel appearing on behalf of the Respondent as recorded herein, are accepted for the purpose of this application.

3. The Petitioner has claimed an amount of about Rs.2,40,00,000/- from the Respondent in respect of the gas supplied by it to the Respondent. Mr.Balsara, relied upon the letters dated 2.3.2005

and 20.3.2006 as constituing an acknowledgment of liability in the sum of Rs.1,25,00,000/-.

4. An injunction is sought to restrain the Respondent from selling its factory pursuant to an application for closure, under the Industrial Disputes Act.

5. There is a serious dispute as to whether a substantive part of the claim falls within the arbitration clause and is covered by the agreement containing the arbitration clause.

6. Mr.Madon submitted that the agreement admittedly came to an end by afflux of time and the claim in so far as it relates to the supply of gas thereafter, is not arbitrable. The Petitioner contended that there was no amendment to the agreement but only an extension thereof. This is an issue which must be decided by the learned Arbitrator.

7. There is however no case for grant of an injunction restraining the Respondent from selling its factory premises, inter-alia, in view of what is stated hereafter.

8. The factory premises have been mortgaged to banks/financial institutions. The Respondent seeks to sell the factory premises for the purpose of enabling it to avail of facilities under the O.T.S Scheme (One Time Settlement). In any event, the Respondent cannot be injuncted from selling the properties itself as that would interfere with the rights of the third parties, including the secured creditors/banks and the workers. There is no bifurcation of the amounts due to the secured and unsecured creditors. The Petitioner is not even willing to agree to indemnify the Respondent against any claim from other creditors against the Respondent for interest, if it is held that the injunction was wrongly obtained and the Respondent suffered damages as a result thereof.

9. Prima-facie, there is no evidence to suggest that the Respondent is selling the properties clandestinely or with a view to delay or defeat any award that may be passed against it. The sale is being done openly and with the knowledge of all the parties.

10. Added to this, is the fact that the Respondent holds a substantial number of shares in its

sister-concern viz. Haldyn Gujarat Ltd. Mr.Madon states that the shares are quoted on the Bombay Stock Exchange and the Ahmedabad Stock Exchange. According to the Respondent, the value of the shares is about Rs.8,00,00,000/- . I will presume the valuation of the Respondent regarding its share-holding, to be correct.

11. The Respondent is at liberty to sell 75% of its share-holding as of date. The balance shares may be sold, encumbered or further encumbered, only after giving the Petitioner’s Advocate, atleast seven days notice in writing. The Respondent shall furnish the details of the said shares within two weeks from today.

12. It is made clear that this order is passed only for the purpose of this petition and it does not reflect upon the merits of the case between the parties at all.

Petition is disposed of accordingly.